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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for AT&T	)	CC Docket No. 92-134
	)	

COMMENTS

U S WEST Communications, Inc. ("U S WEST"),[1] through counsel and pursuant to the Federal Communications Commission's ("Commission") Notice of Inquiry ("Notice") in the above-captioned docket,[2] hereby files its comments on the American Telephone and Telegraph Company's ("AT&T") performance under price cap regulation.

I. INTRODUCTION

In adopting price cap regulation for AT&T in 1989, the Commission noted that the record in the price cap proceeding reflected a broad consensus that rate of return regulation suffered from numerous defects and needed to be corrected.[3]

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[1] U S WEST is a common carrier provider of exchange access and exchange telecommunications services.

[2] Notice of Inquiry, FCC 92-257, CC Docket No. 92-134, rel. July 17, 1992; Order, DA 92-1042, rel. July 29, 1992, extending filing cycle.

[3] Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd. 2873, 2879-80 ¶ 11 (1989) ("AT&T Price Cap Order"), modified on recon., 6 FCC Rcd. 665 (1991) ("AT&T Price Cap Recon. Order"), appeal pending sub nom. American Tel. and Tel. Co. v. F.C.C., No. 91-1178 (D.C. Cir. pet. for rev. filed Apr. 15, 1991).

U S WEST and most other commenters supported the Commission's incentive-based price cap system as a more efficient and more consumer-oriented form of regulation. One of the Commission's foremost goals in adopting price cap regulation was to avoid distortions in carrier purchasing and investment decisions which are inherent in rate of return regulation.[4] The Commission found price cap regulation to more accurately replicate competitive market forces, thereby enhancing efficiency and encouraging greater innovation.[5] These findings are still true today -- nothing in the experience of AT&T or local exchange carriers ("LEC") under price cap regulation in any way calls into question the basic premise underlying the Commission's price cap plan.

While the concept of price cap regulation has been successfully implemented by the Commission, one distortion continues to exist in the AT&T price cap formula. That is -- price changes associated with LEC access charges are treated differently under the AT&T price cap mechanism than Competitive Access Provider ("CAP") price changes. U S WEST urges the Commission to correct this deficiency in its review. The Commission should modify the AT&T price cap mechanism to remove the inherent bias in purchasing LEC access services versus CAP access services.

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[4]<u>AT&T Price Cap Order</u>, 4 FCC Rcd. at 2889-99 ¶¶ 29-57.

[5]<u>Id</u>. at 2893 ¶ 37.

II. THE AT&T PRICE CAP MECHANISM SHOULD BE MODIFIED TO ELIMINATE ANY BIAS IN THE PURCHASE OF ACCESS SERVICES

Under the current AT&T price cap mechanism, changes in LEC access charges are treated as exogenous cost changes. Thus, an increase or decrease in LEC access charges will flow through to AT&T's PCI.[6] Conversely, AT&T cost changes associated with increases or decreases in CAP charges are not given exogenous treatment and are not reflected in AT&T's PCI.[7] The net result under current rules is that AT&T's PCI will: 1) decrease if it purchases LEC access services and LEC access charges are decreasing; 2) increase if it purchases LEC access services and LEC access charges are increasing; and 3) remain unchanged if it purchases CAP access and CAP access charges increase or decrease.

While the preceding statement is an oversimplification since AT&T will probably be purchasing a mix of both LEC and CAP access services at any point in time, it does illustrate the bias inherent in the AT&T price cap mechanism. That is, all other things being equal, AT&T will have a bias towards purchasing LEC access services when LEC prices are rising and a bias towards purchasing CAP access services when LEC prices are falling. This defect in the AT&T price cap mechanism was pointed out by a number of commenters, including U S WEST, in the price cap

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[6] Id. at 3005 ¶ 260.

[7] AT&T Price Cap Recon. Order, 6 FCC Rcd. at 673-74 ¶¶ 68-73.

proceeding.[8] The Commission rejected LEC proposals that CAP charges be treated as exogenous costs on a number of grounds;[9] but, in essence, the Commission was not persuaded by LEC arguments, which were couched in terms of uneconomic bypass. Clearly, the Commission did not view CAPs as a significant competitive threat to LECs in 1989 when the AT&T order was adopted.

Circumstances have changed significantly since that time; CAPs have increased both in number and in size. They are no longer an after-thought in access discussions but are significant access competitors in most major metropolitan areas. Also, the Commission has explicitly stated that it intends to take steps to introduce even greater competition in the interstate access market.[10] The Commission's proposals in its expanded interconnection and local transport proceedings make it clear that the market for interstate access will become even more

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[8] See Reply Comments of The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company, CC Docket No. 87-313, Sept. 9, 1988, at 28-37; Comments of Bell Atlantic Telephone Companies, CC Docket No. 87-313, July 26, 1988, at 11-13.

[9] The Commission noted that CAPs did not file access tariffs with the Commission and it would be difficult to monitor exogenous treatment of these cost changes. Also, the Commission stated that CAP access costs did not qualify for exogenous treatment since they are beyond the control of the Commission. AT&T Price Cap Order, 4 FCC Rcd. at 3029 ¶ 320.

[10] See, e.g., Expanded Interconnection with Local Telephone Company Facilities, 6 FCC Rcd. 3259, 3260-61 ¶¶ 11-16 (1991); Transport Rate Structure and Pricing, 6 FCC Rcd. 5341, 5344-46 ¶¶ 14-20 (1991) ("Transport Rate Structure FNPRM").

competitive in the future.[11] As such, it is imperative that the aforementioned bias be removed from the AT&T price cap mechanism.[12] Not only is it unfair to LECs in times of decreasing access charges, but it is at odds with the Commission's primary goal in adopting price cap regulation -- to eliminate distortions in carrier incentives which were inherent in rate of return regulation.

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[11]One of the Commission's primary objectives in promulgating new local transport rules was to "avoid adopting transport pricing requirements that would interfere with the development of interstate access competition." Transport Rate Structure FNPRM, 6 FCC Rcd. at 5343 ¶ 11.

[12]The fact that this bias plays a part in access purchasing decisions is demonstrated by an excerpt from Southwestern Bell Telephone Company's ("Southwestern Bell") filing in the expanded interconnection proceeding, CC Docket No. 91-141:

> CAPs have expressly touted to IXCs that a major benefit of IXCs switching from LEC services to lower-priced CAP services is that any savings need not be passed along to consumers. A MFS senior vice president, in his deposition in Texas PUC Docket No. 9796, confirmed that at his September 11, 1990 speech to the ACTA Conference he told the audience:
>
> > The interexchange carrier generally pays less for both installation and recurring charges for competitive [CAP] access service. And unlike reductions in switched carrier common line charges made by the BOCs, these savings need not be flowed through to the end user. The long distance carrier may keep the savings for itself to improve its own bottom line. (Emphasis added)

Southwestern Bell Comments, Expanded Interconnection With Local Telephone Facilities, CC Docket No. 91-141, RM 7249, ENF-87-14, filed Aug. 6, 1991, at Appendix B, pp. 9-10 (citing March 25, 1991 Deposition of Robert Douglas Bradbury, pp. 66-67).

<u>**CERTIFICATE OF SERVICE**</u>

I, Kelseau Powe, Jr., do hereby certify on this 4th day of September, 1992, that I have caused a copy of the foregoing **COMMENTS** to be hand delivered to the persons named on the attached service list.

Kelseau Powe, Jr.

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*** via 1st Class Mail**

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